HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL No. 2571 OF 2005

Between

G.Mohan Goud …Appellant

And

The State Election Officer,Commisjsion,

Hyderabad and ors

…Resondents.

Counsel for the appellant : Sri V.Srinivas

Counsel for Respondents 1 to 3: GP for Revenue

Counsel for Respondent No.4: Sri R.V. Subba Rao.

DATE: 28TH DECEMBER, 2005.
Per R.Subhash Reddy,J.

This is an appeal for setting aside order dated 29.11.2005 passed by the learned Single Judge whereby he dismissed the Writ Petition filed by the appellant and confirmed the order passed by the Election Tribunal setting aside his election to the post of Sarpanch of Gram Panchayat, Gattu Village in Mahabubnagar district.

In the election held on 14.8.2001, the appellant and respondent No.4 contested for the post of Sarpanch. The appellant was declared elected because he secured 1193 valid votes as against 909 votes secured by respondent No.4. Respondent No.4 challenged the election of the appellant by filing election petition in O.P.No.6 of 2001 before the Court of Junior Civil Judge-cum-Election Tribunal, Gadwal (hereinafter described as 'the Election Tribunal') mainly on the ground that the latter was guilty of corrupt practices. He averred that the appellant dominated the will of the voters by depositing a sum of Rs.4.00 lakhs in favour of Sri Laxmi Venkateswara Jeernodharana Committee, Gattu; he lured voters to cast their votes by distributing sarees and banians; he influenced minds of voters by supplying intoxicants like toddy and also on the ground that at his instance, the names of some of the eligible voters were removed from the voters list.

The appellant denied the allegations contained in the petition filed by respondent No.4. He averred that he had not indulged in corrupt practices and that the election had been held in accordance with the relevant rules.

On the pleadings of the parties, the Election Tribunal framed two issues, which read as under:

1. Whether the petitioner is entitled for declaration of the election of the fourth respondent is void on the ground of corrupt practice?

2. To what relief ?

Respondent No.4 examined himself as P.W.1 and also examined P.Ws.2 to 5 and produced documentary evidence, marked Exs. A.1 to A.7. The appellant examined himself as R.W.2 and examined two other witnesses as R.Ws.3 and 4.

The Election Tribunal, after considering the pleadings and evidence of the

parties, concluded that the appellant was guilty of indulging in corrupt practices and, therefore, his election was liable to be set aside. The Election Tribunal held that by depositing Rs.4.00 lakhs in the name of Sri Lakhsmi Venkateswara Jeernodharana Committee, the appellant had tried to influence the voters by attracting their religious sentiments. The Tribunal further held that the appellant had supplied banians with his election symbol to the voters with a view to influence their votes. Accordingly, it passed an order dated 18.1.2005 and set aside the election of the appellant with the direction that fresh election be held for the post of Sarpanch.

The appellant challenged the aforementioned order of the Election Tribunal in Writ Petition No.2635 of 2005. The learned Single Judge confirmed the finding recorded by the Election Tribunal that the appellant's act of depositing Rs.4.00 lakhs in the name of Sri Lakshmi Venkateswara Jeernodharana Committee, Gattu was intended to influence the voters by attracting their religious sentiments and that the same amounted to corrupt practice. The learned Single Judge also agreed with the Election Tribunal that the distribution of banians with the election symbol of the appellant is a corrupt practice within the meaning of Section 211 of the Andhra Pradesh Panchayat Act, 1994.

Sri Vedula Srinivas, learned counsel for the appellant argued that the deposit of Rs.4.00 lakhs by the appellant in the State Bank of India in the name of Sri Lakshmi Venkateswara Jeernodharana Committee did not amount to corrupt practice because the same did not in any manner influence the voters in casting their votes. He submitted that the amount was deposited because there was a proposal to unanimous election of the Sarpacnh. He then argued that the evidence produced before the Tribunal was wholly insufficient to prove that the appellant was responsible for distributing banians with his election symbol and the learned Single Judge gravely erred by holding the appellant guilty of adopting corrupt practices.

Sri R.V. Subbarao, learned counsel for respondent No.4 supported the order under challenge and argued that the Division Bench may not interfere with the concurrent findings recorded by the Election Tribunal and the learned Single Judge on the issue of corrupt practices indulged by the appellant.

Before adverting to the contentions of the learned counsel, we deem it proper to observe that the High Court's power of judicial review in such matters is very limited. In **Syed Yakob vs. K.S. Radhakrishna and others**, the Supreme Court

held that a writ of certiorari can be issued only for correcting errors of jurisdiction or an order passed in violation of the rules of natural justice or when the quasi-judicial authority commits an error of law apparent on the facts of the record. For the sake of reference, the relevant extracts of that judgment are reproduced below:

> *"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals; these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or, is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciating of evidence cannot be reopened or questioned in writ proceedings. An error of law, which is apparent on the face of the record, can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law, which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by an Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."*

We shall now advert to the case on hand. A reading of order dated 18.1.2005 passed by the Election Tribunal and the order of the learned Single Judge shows that both of them have concurrently held the appellant guilty of adopting corrupt

practices. The Election Tribunal held that the appellant's act of depositing Rs.4.00 lakhs in the name of Sri Lakshmi Venkateswara Jeernodharana Committee was meant to attract the religious sentiments of the voters and to influence them to caste their votes in his favour. It further held that the distribution of banians with the election symbol of the appellant was also intended to influence the voters. These findings are based on appreciation of evidence. The learned Single Judge independently examined the evidence and concurred with the findings recorded by the Election Tribunal.

We have carefully perused the two orders and are of the view that the findings recorded on both the aforementioned issues are based on a correct appreciation of evidence and do not call for interference under Article 226 of the Constitution. All the witnesses examined by respondent No.4 categorically stated that the appellant had deposited Rs.4.00 laksh in the name of Sri Lakshmi Venkateswara Jeernodharana Committee and withdrew that amount only after declaration of the result. The deposit made by the appellant was subsisting during the process of election. He could not offer any explanation for keeping the deposit in the name of Sri Lakshmi Venkateswara Jeernodharan Committee for a period of 46 days. Therefore, the suggestive argument made by the learned counsel for the appellant that amount was deposited in the back drop of the negotiations for unanimous election for the post of Sarpanch cannot be accepted.

In the case of **M*. Chenna Reddy Vs. V.Ramachandra Rao and another*** the Supreme Court has considered the scope of burden of proof, and, assessment of evidence in election trials, and, held, in case of failure of a candidate to lead evidence, which was available to rebut the allegations, will also lead adverse inference against such candidate.

By applying the ratio of the aforesaid judgments to the facts of the case, we hold that the concurrent findings recorded by the Election Tribunal and the learned Single Judge do not call for interference.

In the result, the appeal is dismissed.

R.SUBHASH REDDY,J.

G.S. SINGHVI, CJ.

28TH DECEMBER, 2005.

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